

FEB 26 2010

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE,

PETITIONER,

VS.

AMERICAN COMMUNITY MUTUAL  
INSURANCE COMPANY,

RESPONDENT.

CONSENT ORDER

CAUSE NO. C-1809

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its attorney, Michael C. Boyd and American Community Mutual Insurance Company, ("Respondent"), mutually stipulate and agree as follows:

JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondent pursuant to Neb. Rev. Stat. §44-101.01, §44-303 and §44-1536 et seq and Title 210 NAC Chapter 61.
2. Respondent is a Michigan domiciled insurer licensed to conduct business in Nebraska as a foreign insurer at all times material hereto.

STIPULATIONS OF FACT

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. American Community Mutual Insurance Company, Cause Number C-1809 on January 26, 2010. A copy of the petition was served upon the Respondent's agent, Laura L. Quinn, at 39201 Seven Mile Road, Livonia, MI 48152-1094 by certified mail, return receipt requested.

2. Respondent violated Neb. Rev. Stat. §§44-1539, 44-1540(3), 44-1540(8), 44-1540(13), and Title 210 NAC Chapter 61 §008.02 as a result of the following conduct:

- a. On March 27, 2008, an individual, P.K. (hereinafter "Insured"), applied for a Medalist II Medical Expense-Preferred Provider Option Insurance Policy which, upon completion of its underwriting of the policy application, was issued by Respondent with an effective date of May 9, 2008.
- b. In April, 2008, Insured sustained an injury to his chest due to a fall from a pick-up truck and was admitted for treatment at Avera Sacred Heart Hospital (Avera) for 5 days. He was found to have sustained rib fractures with apparent pneumothorax, grade 1 liver laceration and pleural effusion. He subsequently had a reaccumulation of pleural effusion and was evaluated and treated in May, 2008 at North Central Heart Institute (North Central).
- c. On June 2, 2008, Respondent received the Insured's initial claim, and on June 17, 2008, Respondent sent an acknowledgement of claim to Insured, along with a health history questionnaire and authorization to release medical records. Additional medical billings for the various May, 2008 treatments of Insured's above-mentioned reaccumulation of pleural effusion were received later in June, 2008.
- d. During a period of time between June 16, 2008 and August 12, 2008, a series of "claim delay" letters to Insured from Respondent occurred advising that Respondent had requested medical information on the Insured's health claim. These "claim delay" letters to the Insured were sent every couple of weeks. During that time, the Respondent had requested medical records from both Avera and North Central.
- e. On August 15, 2008, Respondent sent a letter to Insured. In that letter, Respondent informed Insured that in order to determine whether or not his claims were for a covered condition under his medical expense policy, they had to request additional medical information from Avera, and that to date, they had not received a response from Avera to their request. Therefore, Respondent was unable to make a determination of coverage of Insured's claims and could not provide benefits. On August 26, 2008, Respondent received the medical records from Avera that they had requested.
- f. On October 31, 2008, Respondent sent Insured a letter rescinding his medical expense health insurance policy due to a change in Insured's health that occurred before the policy was approved that was material to their acceptance of the insurance risk, and was not disclosed to the Respondent by the Insured. Therefore, there would be no coverage of the Insured's claims, and his premium was refunded on November 3, 2008.

- g. No written "claim delay" letters were sent to Insured by Respondent between August 15, 2008 and the October 31, 2008 letter rescinding Insured's medical expense policy with Respondent.
- h. Insured and his wife filed a complaint with the Nebraska Department of Insurance. Pursuant to the investigation, Barbara Ems, an insurance investigator with the Nebraska Department of Insurance, sent an inquiry letter on or about January 16, 2009 to Respondent concerning its handling of the Insured's claims, including why there was significant delay in their handling of the claim.
- i. On or about March 4, 2009, Respondent wrote back to Ms. Ems that "the delay in the completion of our review was due to staffing issues." Additionally, Respondent included a "timeline of handling of claims review" as well as copies of its "claim delay" letters to the Insured that, in effect, admitted that they failed to send Insured a reasonable written explanation, between August 15, 2008 and October 31, 2008, why additional time was needed for investigation of his claims.

3. Respondent was informed of their right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving their right to a public hearing, Respondent also waives their right to confrontation of witnesses, production of evidence, and judicial review.

4. Respondent admits the allegations contained stated in Paragraph #2 above.

#### CONCLUSIONS OF LAW

Respondent's conduct as alleged above constitutes violations of Neb. Rev. Stat. §§44-1539, 44-1540(3), 44-1540(8), 44-1540(13) and Title 210 NAC Chapter 61 §008.02.

#### CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed to by Respondent, American Community Mutual Insurance Company, that they shall pay an administrative fine of \$1,500. The fine shall be paid in total within thirty days after the Director of the Department of Insurance affixes her signature to this document and approves said consent agreement. The Department of Insurance

will continue to retain jurisdiction over this matter and shall prosecute any other violations for failure to comply with this Consent Order.

In witness of their intention to be bound by this Consent Order, each party has executed this document by subscribing their signature below.

Michael C. Boyd  
Michael C. Boyd  
Attorney for Petitioner  
941 O Street, Suite 400  
Lincoln, NE 68508  
(402) 471-2201

2-25-2010  
Date

[Signature]  
American Community Mutual Life Insurance  
Company, Respondent

By: Francis R. Dempsey  
SVP & General Counsel

2/17/10  
Date

State of Michigan )  
County of Wayne ) ss.

On this 17<sup>th</sup> day of February, 2010, an authorized representative of American Community Mutual Insurance Company personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be his/her voluntary act and deed.

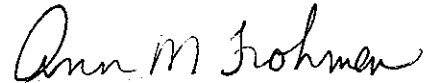
Kimberly A. Kramm  
Notary Public

KIMBERLY ANN KRAMM  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES Aug 21, 2012  
ACTING IN COUNTY OF

CERTIFICATE OF ADOPTION

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the  
Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs.  
American Community Mutual Insurance Company, Cause No. C-1809.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



ANN M. FROHMAN  
Director of Insurance

2-26-10

Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was sent to the Respondent's  
agent, Laura L. Quinn, at 39201 Seven Mile Road, Livonia, MI 48152-1094 by certified mail,  
return receipt requested on this 1<sup>st</sup> day of <sup>march</sup> ~~January~~, 2010.

